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OFFICE OF PETITIONS

In re Application :
David H. Mowry :
Application No. 09/769,746 :
Filed: January 25, 2001 :
Atty Docket No. 07883.0106 :
: DECISION ON APPLICATION
: FOR PATENT TERM ADJUSTMENT

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.705(b)," filed August 30, 2005. Applicants requests that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from five hundred sixteen (516) days to five hundred forty-five (545) days.

The application for patent term adjustment is **DISMISSED**.

On June 2, 2005, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above identified application. The Notice stated that the patent term adjustment (PTA) to date is five hundred sixteen (516) days. On August 30, 2005, Applicant timely¹ submitted an application for patent term adjustment, asserting that the correct number of days of PTA at the time of the mailing of the Notice of Allowance is five hundred forty-five (545) days.

¹ Applicant filed the instant application for patent term adjustment together with the payment of the issue fee.

Applicant specifically states that the patent issuing from the application is not subject to a terminal disclaimer.

The Office initially determined a patent term adjustment of five hundred sixteen (516) days based on an adjustment for PTO delay of five hundred seventy-four (574) days pursuant to 35 U.S.C. 154(b)(1)(A)(i) and 37 C.F.R. § 1.703(a)(1), reduced by applicants' delays of twenty-nine (29) days pursuant to 35 U.S.C. 154(b)(2)(C)(i) and 37 C.F.R. § 1.704(b) on February 18, 2004, and twenty-nine (29) days pursuant to 35 U.S.C. 154(b)(2)(C)(i) and 37 C.F.R. § 1.704(b) on December 9, 2004. The PTO delay of 574 days and applicant's first delay of 29 days have been reviewed and found to be correct. The second adjustment of 29 days is at issue.

The Office mailed a final Office action on August 10, 2004. Applicants filed a reply on November 4, 2004. However, the reply was not in compliance with 37 C.F.R. § 1.113(c). Accordingly, the Office mailed an Advisory Action on November 30, 2004, indicating that the reply would not be entered. Applicant filed a Notice of Appeal on December 9, 2004, and pursuant to 37 C.F.R. § 1.704(b), was assessed applicant delay of twenty-nine (29) days.

It is the applicant's responsibility to take the necessary action in an application under a final Office action to provide a complete reply under 37 C.F.R. § 1.113. An Advisory Action is not a "notice or action by the Office making any rejection, objection, argument, or other request". 37 C.F.R. § 1.704(b). The Advisory Action indicated that the period for response would continue to run from the mailing date of the final Office action. Accordingly, the adjustment of twenty-nine (29) days was correct.

The correct determination of patent term adjustment at the time of the mailing of the Notice of Allowance is **five hundred sixteen (516)** (574 days of PTO delay, reduced by 58 (29+29) days of applicant delay).

The Office acknowledges submission of the \$200.00 fee set forth in 37 C.F.R. § 1.18(e).

The application file is being forwarded to the Office of Patent Publication to complete the issuance process for the patent.

Telephone inquiries specific to this matter should be directed to Cliff Congo, Petitions Attorney, at (571)272-3207.

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